

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Amended After Comments)

5 907 KAR 1:155. Payments for supports for community living services for an individu-  
6 al with an intellectual or~~[mental retardation or a]~~ developmental disability.

7 RELATES TO: KRS 205.520, 42 C.F.R. 441, Subpart G, 447.272, 42 U.S.C. 1396a,  
8 b, d, n

9 STATUTORY AUTHORITY: KRS 142.363, 194A.030(3), 194A.050(1), 205.520(3),  
10 205.6317

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
12 Services, Department for Medicaid Services, is required to administer the Medicaid  
13 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to com-  
14 ply with any requirement that may be imposed, or opportunity presented, by federal law  
15 to qualify for federal Medicaid funds~~[for the provision of medical assistance to Ken-~~  
16 ~~tucky's indigent citizenry]~~. This administrative regulation establishes the reimbursement  
17 policies~~[provisions]~~ relating to home and community based waiver services provided to  
18 an individual with an intellectual ~~[or]~~~~[mental retardation or a]~~ ~~developmental~~ disability  
19 as an alternative to placement in an intermediate care facility for an individual with an  
20 intellectual~~[or]~~~~[mental retardation or a]~~ ~~developmental~~ disability. The policies apply  
21 to supports for community living (SCL) waiver service providers who provide services to

individuals who receive SCL waiver services pursuant to 907 KAR 1:145. A new SCL waiver program is being established pursuant to 907 KAR 12:010 which establishes service and coverage policies for SCL waiver recipients which shall apply upon the recipient transitioning to the new version of the SCL waiver program. The transition shall occur during the month of the recipient's next birthday. Until the SCL waiver recipient transitions to the new version of the SCL waiver program, the service policies established in 907 KAR 1:145 and reimbursement policies established in this administrative regulation shall apply to the SCL waiver recipient and to providers who provide services to the SCL waiver recipient.

Section 1. Definitions. (1) "Department" means the Department for Medicaid Services or its designee.

(2) "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable either to an intellectual disability as defined in this section or a condition related to an intellectual disability that results in:

1. An impairment of general intellectual functioning and adaptive behavior similar to that of a person with an intellectual disability; and

2. Are a direct result of, or are influenced by, the person's cognitive deficits.

(3) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least

two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

(b) Which occurred prior to the individual reaching eighteen (18) years of age.

(4) "North Carolina Support Needs Assessment Profile" or "NC-SNAP" means a standardized tool used for the measurement of supportive services needed by an individual with a disability.

(5)~~[(3)]~~ "Overall level of eligible support" means the highest of three (3) scores from the daily living domain, health care domain, or behavior domain, as established by the NC-SNAP.

(6)~~[(4)]~~ "Supports for community living services" or "SCL services" means community-based waiver services for an individual with an intellectual or~~[mental retardation or a]~~ developmental disability.

Section 2. Coverage. (1) The department shall reimburse a participating SCL provider for a covered service provided to a Medicaid recipient who:

(a) Meets patient status criteria for an intermediate care facility for **individuals with intellectual disabilities**~~[an individual with an intellectual or]~~~~[mental retardation or a]~~~~[-developmental disability]~~ as established in 907 KAR 1:022; and

(b) Is authorized for an SCL service by the department.

(2) In order to be covered, a service shall be provided in accordance with the terms and conditions specified in 907 KAR 1:145.

Section 3. SCL Reimbursement. (1) Specialized medical equipment and supplies shall:

(a) Be a unit of service in which one (1) unit equals one (1) item as provided in Section 4 of this administrative regulation;

(b) Be reimbursed:

1. By a reduction of twenty (20) percent of submitted costs for approved dental services; and

2. Based on the submission of three (3) price estimates of which the lowest shall determine the amount of reimbursement; and

(c) Not include furniture, a recreational item, or a leisure item.

(2) A functional assessment to determine the need for a behavior support plan shall be limited to a total of forty (40) units per recipient per provider.

(3) A behavior support plan, if required, shall be limited to a total of twenty-four (24) units per recipient per provider.

(4) Monitoring a behavior support plan shall be limited to twelve (12) units per week.

Section 4. Fixed Upper Payment Limits. (1) The following rates shall be the fixed upper payment limits for the SCL services in conjunction with the corresponding units of

1 service:

Service	Unit of Service	Upper Payment Limit
Adult day training on-site	15 minutes	\$2.50
Adult day training off-site	15 minutes	\$3.00
Adult foster care	24 hours	\$112.49
Assessment/reassessment	1 assessment or reassessment	\$75.00
Behavior support	15 minutes	\$33.25
Case management	1 month	\$376.06
Children's day habilitation	15 minutes	\$2.50
Community living supports	15 minutes	\$5.54
Family home provider	24 hours	\$112.49
Group home	24 hours	\$126.35
Occupational therapy by occupational therapist	15 minutes	\$22.17
Occupational therapy by certified occupational therapy assistant	15 minutes	\$22.17
Physical therapy by physical therapist	15 minutes	\$22.17
Physical therapy by physical	15 minutes	\$22.17

therapy assistant		
Psychological services	15 minutes	\$38.79
Respite	15 minutes	\$2.77
Specialized medical equipment and supplies	1 item	Based on submission of 3 price estimates and reimbursed as described in Section 3 of this administrative regulation.
Speech therapy	15 minutes	\$22.17
Staffed residence	24 hours	\$168.46
Supported Employment	15 minutes	\$5.54

(2) Adult day training on-site and off-site shall be limited to:

(a) Forty (40) hours (160 units) per week; and

(b) 255 days per calendar year with the specific days established in the individual support plan and approved by the department.

(3) Children's day habilitation shall be limited to forty (40) hours (160 units) per week.

Section 5. Non-Level II Intensity Payment. (1) In addition to the rates specified in

Section 4 of this administrative regulation, a provider shall receive an intensity payment

if the provider meets the criteria established in subsection (2) of this section.

(2) A non-Level II intensity payment for a unit of service shall be:

(a) Made if a recipient has a score equal to five (5) on the NC-SNAP;

(b) Made for no more than ten (10) percent of the total Medicaid SCL population; and

(c) For the following SCL services:

1. Staffed residence;

2. Community living supports;

3. Respite;

4. Family home provider;

5. Group home;

6. Adult foster care home;

7. Adult day training on-site;

8. Adult day training off-site; or

9. Children's day habilitation.

(3) A non-Level II intensity payment for a unit of service shall be as follows:

Service	Intensity Payment
Adult day training on-site	\$0.40
Adult day training off-site	\$0.40
Children's day habilitation	\$0.40
Staffed residence	\$33.69
Community living	\$0.83
Respite	\$0.42

Family home provider	\$16.87
Group home	\$25.27
Adult foster care home	\$16.87

Section 6. Level II Intensity Payment. (1) The department shall reimburse an adult day health care center which qualifies for Level II reimbursement pursuant to 907 KAR 1:170 an intensity payment of fifty (50) cents per unit for adult day training on-site or adult day training off-site provided to an SCL recipient.

(2) If an SCL recipient qualifies an adult day health care center for a non-Level II intensity payment and a Level II intensity payment, the department shall pay the Level II intensity payment.

Section 7. All-Inclusive Enhanced Rate. (1) Effective September 1, 2006, the department shall reimburse an all-inclusive rate of \$125,000 per recipient per year to a group home, staffed residence, family home provider, or adult foster care home for SCL services that are provided, in accordance with 907 KAR 1:145, Section 4, to an individual who has transitioned from an institutional setting to a community setting.

(2) The rate established in subsection (1) of this section shall be paid for care to an individual who:

(a) Prior to the transition, expressed, or whose legal guardian expressed, a desire to transition from the facility in which he resided to a community placement; and

(b)1. Prior to the transition, resided in an ICF-IID~~ICF-ID~~~~ICF-MR-DD~~ for the entire two (2) year period, with the period ending no earlier than July 1, 2006, immediately preceding transitioning out of the ICF-IID~~ICF-ID~~~~ICF-MR-DD~~ and who was approved



1 by the department for transitioning;

2 2. Resided in an ICF-IID~~[ICF-ID][ICF-MR-DD]~~ for a period of less than two (2) years  
3 but more than six (6) months, with the period ending no earlier than July 1, 2006, im-  
4 mediately preceding transitioning out of the ICF-IID~~[ICF-ID][ICF-MR-DD]~~ and who was  
5 approved for transitioning by the department; or

6 3.a. Transitioned from an institutional setting other than an ICF-IID~~[ICF-ID][ICF-MR-~~  
7 ~~DD]~~;

8 b. Had a primary diagnosis of ~~[mental retardation]~~ or developmental disability;

9 c. Had resided in an ICF-IID~~[ICF-ID][ICF-MR-D][D]~~ for a period of at least six (6)  
10 months within the preceding two (2) years;

11 d. Had received prior SCL funding; and

12 e. Had been reviewed and approved for transitioning by the department.

13 (3) To be considered for providing services to an individual meeting the criteria es-  
14 tablished in subsection (2) of this section, a provider shall:

15 (a) Demonstrate its ability to ensure that the potential recipient will have access to  
16 each service identified in his or her individual support plan through:

17 1. The provider's own operation; or

18 2. An established network of providers that are:

19 a. Enrolled in the Medicaid Program; or

20 b. Certified or licensed in accordance with state law governing their specific area of  
21 practice;

22 (b) Notify the department in writing:

23 1. Of the number of individuals it is willing and able to accept;

1        2. The date it will be able to accept an individual or individuals; and

2        3. That it is willing and able to provide services to a minimum of one (1) individual  
3 who has scored at least five (5) on the NC-SNAP; and

4        (c) Be able to serve a minimum of three (3) individuals, regardless of funding source,  
5 in the residence. A provider shall not be required to serve a minimum of three (3) indi-  
6 viduals referenced in subsection (2) of this section, but shall be able to serve a mini-  
7 mum of three (3) individuals in the residence.

8        (4) To receive the rate established in subsection (1) of this section, a provider shall  
9 submit documentation to the department of each SCL service provided to the recipient  
10 for whom the special rate is paid.

11        (5) The reimbursement established in subsection (1) of this section:

12        (a) Shall expire if approval from the Centers for Medicare and Medicaid Services  
13 ceases and corresponding funding becomes unavailable; and

14        (b) Shall be all inclusive, meaning that it shall cover residential as well as all other  
15 SCL services, in accordance with 907 KAR 1:145, Section 4, provided to the recipient  
16 for a year.

17        (6) Recipient freedom of choice provisions shall apply during an individual's transition  
18 from an institution to a group home, staffed residence, family home provider or adult  
19 foster care home.

20        (7) An individual may transition to a group home, staffed residence, family home pro-  
21 vider, or adult foster care home if:

22        (a) The individual is eligible for SCL services pursuant to 907 KAR 1:145;

23        (b) The department determines that the group home, staffed residence, family home

1 provider, or adult foster care home satisfies the requirements established in this sec-  
2 tion; and

3 (c) The group home, staffed residence, family home provider, or adult foster care  
4 home meets the SCL provider requirements established in 907 KAR 1:145.

5 (8)(a) If a group home, staffed residence, family home provider, or adult foster care  
6 home declines to accept an individual referenced in subsection (2) of this section, the  
7 provider, except as established in paragraph (b) of this subsection, shall be ineligible to:

8 1. Provide services to any future individual who meets the criteria established in sub-  
9 section (2) of this section; and

10 2. Receive the corresponding rate referenced in subsection (1) of this section for  
11 care provided to any future individual.

12 (b) If the department determines that a provider who declines to accept an individual  
13 is not equipped to serve the individual and that the placement would be inappropriate,  
14 the provider may be considered for future placements and payments.

15 (c) Refusing to accept an individual referenced in subsection (2) of this section shall  
16 not preclude a provider from continuing to:

17 1. Serve an individual meeting the criteria established in subsection (2) of this sec-  
18 tion who is already residing in the provider's residence; or

19 2. Be reimbursed at the rate established in subsection (1) of this section for services  
20 provided to an individual already residing in the provider's residence.

21 Section 8. North Carolina Support Needs Assessment Profile (NC-SNAP). (1) A re-  
22 cipient of an SCL waiver service shall have an NC-SNAP administered:

23 (a) By the department; and

(b) In accordance with the NC-SNAP Instructor's Manual.

(2) A new NC-SNAP may be administered:

(a) At the department's discretion; or

(b) At the timely request of an SCL provider if a change in a recipient's circumstances results in the need for increased or decreased supportive services.

(3) A provider shall be responsible for the cost of an NC-SNAP at the time administered:

(a) In accordance with subsection (2)(b) of this section; or

(b) As a result of an appeal filed in accordance with Section 10 (1) of this administrative regulation.

Section 9. Auditing and Reporting. An SCL provider shall maintain fiscal records and incident reports in accordance with the requirements established in 907 KAR 1:145, Section 3(10).

Section 10. Transition to New SCL Waiver. (1) The reimbursement policies established in this administrative regulation shall:

(a) Apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 1:145; or

(b) Not apply to an SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010.

(2) An SCL waiver service provided to an SCL waiver service recipient pursuant to 907 KAR 12:010 shall be reimbursed pursuant to 907 KAR 12:020.

(3) The policies established in this administrative regulation shall become null and void at the time that:

1     (a) All SCL waiver service recipients receive SCL waiver services pursuant to 907  
2     KAR 12:010; and

3     (b) No SCL waiver recipient receives SCL waiver services pursuant to 907 KAR  
4     1:145.

5     Section 11.~~[Section 10]~~ Appeal Rights. (1) An appeal of an NC-SNAP score in ac-  
6     cordance with 907 KAR 1:671 shall not be allowed if the change in score does not af-  
7     fect the provider's reimbursement level.

8     (2) An appeal of a department decision regarding a Medicaid beneficiary shall be in  
9     accordance with 907 KAR 1:563.

10    (3) An appeal of a department decision regarding the eligibility of an individual shall  
11    be in accordance with 907 KAR 1:560.

12    (4) A provider may appeal a department decision regarding the application of this  
13    administrative regulation in accordance with 907 KAR 1:671.

14    Section 12.~~[14.]~~ Incorporation by Reference. (1) The following material is incorpo-  
15    rated by reference:

16    (a) "MAP-95 Request for Equipment Form" Department for Medicaid Services, Sep-  
17    tember 2002 Edition;

18    (b) "North Carolina Support Needs Assessment Profile (NC-SNAP)", 2000 Edition,  
19    copyright Murdoch Center Foundation; and

20    (c) "NC-SNAP Instructor's Manual", copyright 1999, Murdoch Center Foundation.

21    (2) This material may be inspected, copied, or obtained, subject to applicable copy-  
22    right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,  
23    Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (31 Ky.R. 469 eff. 11-5-

<sup>1</sup> 2004; 33 Ky.R. 1169; 1859; eff. 3-9-07.)

907 KAR 1:155

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lawrence Kissner, Commissioner  
Department for Medicaid Services

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 1:155

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact: Claudia Johnson (502) 564-7702, Dr. Stephen Hall (502) 564-4527, or  
Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes the reimbursement policies for the current Medicaid Supports for Community Living (SCL) waiver program. The Department for Medicaid Services (DMS) is implementing a new version of the SCL waiver program. Service and coverage policies for the new version will be established in 907 KAR 12:010 and reimbursement policies will be established in 907 KAR 12:020. Individuals will transition from the current SCL waiver program to the new SCL waiver program during the month of the individual's next birthday. The reimbursement policies established in this administrative regulation shall continue to apply to services provided to individuals receiving SCL waiver services under this regulation. At the time that all individuals have transitioned to the new SCL waiver program, this administrative regulation shall become null and void.
  - (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish reimbursement policies for the original Medicaid SCL waiver program until individuals receiving services under the original SCL waiver program have transitioned to the new SCL waiver program.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies for the original SCL waiver program until individuals transition to the new SCL waiver program.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program reimbursement policies for the original SCL waiver program until individuals transition to the new SCL waiver program.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
  - (a) How the amendment will change this existing administrative regulation: The amendment establishes that until individuals have transitioned to the new SCL waiver program, the reimbursement policies in this administrative regulation shall continue to apply to SCL waiver services provided to those individuals. The amendment after comments corrects the acronym used for intermediate care facility for individuals with an intellectual disability. The correct acronym [which is used by the Centers for Medicare and Medicaid Services (CMS) which approved



- this program and provides federal funding for it] is ICF-IID.
- (b) The necessity of the amendment to this administrative regulation: Due to the large number of SCL waiver program recipients – over, 3,500 individuals – DMS is unable to transition everyone to the new SCL waiver program concurrently; therefore, amending this regulation to establish a phased in approach is necessary. The amendment after comments is necessary to use the correct acronym (ICF-IID) employed by CMS.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it. The amendment after comments conforms to the content of the authorizing statutes by using an acronym used by CMS.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it. The amendment after comments will assist in the effective administration of the authorizing statutes by using an acronym used by CMS.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers of SCL services will be affected by the amendment. Currently, there are 202 such providers.
  - (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
    - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No action is required by the amendment.
    - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.
    - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will benefit by being reimbursed for services provided.
  - (5) Provide an estimate of how much it will cost to implement this administrative regulation:
    - (a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.
    - (b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for

that state fiscal year.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) The administrative regulation contains a higher level of reimbursement (Level II) for providers who serve individuals with more intense needs than the lower reimbursement levels.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 1:155

Agency Contact: Claudia Johnson (502) 564-7702, Dr. Stephen Hall (502) 564-4527, or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
  - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.
  - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.
  - (c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.
  - (d) How much will it cost to administer this program for subsequent years? The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: